

**AMENDMENTS TO THE DRAWINGS**

Applicant submits herewith replacement drawing sheets for FIGS. 12–23 for the present application.

### **REMARKS**

This amendment is responsive to the Office Action dated December 15, 2005. Applicant has amended claims 1, 52, 57, 68, and 81. Claims 1–87 are pending, with claims 16–51, 61–67, 79, 80, and 84–87 having been previously withdrawn.

### **Claim Rejection Under 35 U.S.C. § 102**

In the Office Action, the Examiner rejected claims 1–4, 7–15, 52, 54–56, 58–60, 68–78, and 81–82 under 35 U.S.C. 102(e) as being anticipated by Jorgenson et al. (US 2002/0095232). Applicant respectfully traverses the rejection to the extent such rejection may be considered applicable to the amended claims. Jorgenson et al. fails to disclose each and every feature of the claimed invention, as required by 35 U.S.C. 102(b), and provides no teaching that would have suggested the desirability of modification to include such features.

#### *Claims 1–4, 7–15 and 68–78*

With respect to independent claim 1, Jorgenson et al. fails to teach or suggest at least the step of generating, based on the product movement information, a report identifying commingled products of a similar type that have been stored together into a single lot. Similarly, with respect to independent claim 68, Jorgenson et al. fails to teach or suggest at least a web server to identify any commingled products of a similar type that have been stored together into a single lot.

In rejecting claim 1, the Examiner stated that Jorgenson et al. discloses a method comprising generating a report identifying commingled products based on the product movement information, and cited paragraphs 61 and 71 of Jorgenson et al. However, contrary to the Examiner's assertion, Jorgenson et al. makes no mention of generating a report identifying commingled products of a similar type that have been stored together into a single lot, as required by amended claims 1 and 68.

Instead, Jorgenson et al. describes tracing a single lot of a product as that product is processed into a different form. For example, Jorgenson et al. states that it addresses the process of “tracing an item as the item develops into another item and progresses along a supply chain.”<sup>1</sup>

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<sup>1</sup> Jorgenson et al., at paragraph 73.

At paragraph 79, Jorgenson et al. describes tracing flour that is processed into dough and ultimately into a bread product:

*FIGS. 13–15 illustrate the tracing of the flour, dough and finished bread product at a bakery stage 1300 of the supply chain. A bakery purchases the flour from the mill, receives performance report 1220 and stores the flour in a flour lot bin.*

As another example, paragraph 61 of Jorgenson et al. as cited by the Examiner shows only lab results listing the characteristics of a particular crop or livestock item, and does not identify products commingled with other products *of a similar type* that are stored into the same lot:

*If the farmer clicked on a contract number in lab results box 425, the farmer could view the lab results for that particular contract. Lab result information can include a variety of things like protein, DNA, pesticide content, moisture, foreign matter, ash, vitamin and mineral make-up varying greatly depending on which crop or livestock item is tested.*

Thus, Jorgenson et al. makes no mention of tracing separate lots of products of a similar type that have been commingled during storage. Applicant's claims 1 and 68 require identifying commingled products of a similar type that have been stored together into a single lot. Applicant has amended claims 1 and 68 to clarify by way of a non-narrowing amendment that "commingled products" refer to products of a similar type that are commingled during storage, i.e., stored together into a single lot. This distinction is further illustrated at paragraph 44 of the present application:

*If two different lots of two different crops (e.g., high protein corn and corn with standard protein levels) mix together during storage or transport, a new lot is effectively created and lot tracking system 10 tracks both the new combination and the original lots with a single lot identifier.*

Jorgenson et al. fails to teach or suggest any mechanism for generating, based on the product movement information, a report identifying commingled products of a similar type that have been stored together into a single lot, recited by claim 1. Similarly, Jorgenson et al. fails to teach or suggest a web server to identify any commingled products of a similar type that have been stored together into a single lot, recited by independent claim 68.

Moreover, with respect to dependent claim 3, Jorgenson et al. fails to disclose assigning a new lot identifier when the products are commingled at a location. As discussed above, the products that are commingled are products of a similar type that have been stored together into a single lot. Jorgenson et al. fails to teach any mechanism for assigning a new lot identifier in this

situation. Jorgenson et al. relates to tracing a product that is processed into a different product and, in fact, fails to address when two or more products of similar type are commingled.

With respect to dependent claims 75 and 78, Jorgenson et al. fails to disclose an indication of whether a storage facility or a transportation device are clean and empty, and fails to disclose an identification of any lots stored in the storage facility or moved in the transportation device since the last indicated clean and empty status. In rejecting these claims, the Examiner referred to paragraphs 37, 41, and 47 of Jorgenson et al. However, Jorgenson et al. fails to mention indicating a clean and empty status, let alone identifying lots stored in a storage facility since the last indicated clean and empty status.

*Claim 52, 54–56, 58–60*

With respect to independent claim 52, Jorgenson et al. fails to teach or suggest a computer-readable medium comprising instructions stored thereon causing a programmable processor to present a transportation interface to receive movement information from a transporter of the product including an identification of the transportation device and timing information, wherein the timing information includes a time stamp identifying when the lot is moved; and present a storage interface to receive storage information from a storage facility identifying the location where the lot is stored and timing information, wherein the timing information includes a time stamp identifying when the lot is stored.

The movement information and storage information of claim 52 include a time stamp identifying when the lot is moved and a time stamp identifying when the lot is stored, respectively. The transportation interface and the storage interface each receive a time stamp every time a given lot is transported or stored. These time stamps may be used by the lot tracking program to track the lot. This is further illustrated at paragraph 63 of the present application:

*[L]ots are uniquely identified and each time a lot moves, that move is time stamped and entered into database table 230. Thus, by knowing where a given lot is and for how long, along with an indication of any other lot(s) are already present or subsequently added, lot tracking system 10 can determine a complete history.*

In contrast, Jorgenson et al. makes no mention of using time stamps to identify when a lot is moved or stored.

As another example, Jorgenson et al. fails to teach or suggest presenting a transportation interface to receive movement information from a transporter of the product. Jorgenson et al. provides an extensive list of interfaces included in its system, such as a producer interface to be used by a farmer, a processor interface to be used by a mill, and a manufacturer interface to be used by a bakery. Significantly, Jorgenson et al. does not disclose a transportation interface.<sup>2</sup> Jorgenson et al. makes no mention of an interface by which information may be received from a transporter of the product.

With respect to claims 55–56 and 58–59, Jorgenson et al. fails to disclose an indication of whether a storage facility or a transportation device are clean and empty, and fails to disclose an identification of any lots stored in the storage facility or moved in the transportation device since the last indicated clean and empty status. In rejecting these claims, the Examiner referred to paragraphs 37, 41, and 47 of Jorgenson et al. However, Jorgenson et al. fails to mention indicating a clean and empty status, let alone identifying lots stored in a storage facility since the last indicated clean and empty status.

#### *Claim 81–82*

As another example, with respect to independent claim 81, Jorgenson et al. fails to teach or suggest receiving product movement information including a location status and a time stamp, wherein the time stamp identifies when a product is moved; storing the product movement information in a database; and generating a report identifying each product location and any other products of a similar type commingled with the product.

In rejecting claims 81–83, the Examiner merely stated that these claims are rejected under the same rationale set forth above. Applicant respectfully submits that the Examiner has failed to address all of the limitations of Applicant's claims. For example, Jorgenson et al. fails to teach or suggest receiving product movement information including a location status and a time stamp, and storing the product movement information in a database, as recited by claim 81.

Claim 81 recites receiving a time stamp. As discussed above, the time stamp is used to determine a history of a given lot. The timestamp may also be used to generate a report identifying each product location and any other products commingled with the product. The

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<sup>2</sup> See, e.g., Jorgenson et al. at paragraphs 34–38.

Examiner seems to have overlooked the important feature of receiving product movement information including a time stamp, and has provided no indication of it being taught by Jorgenson et al. In fact, Jorgenson et al. provides no teaching or suggestion of receiving product movement information including a time stamp, let alone using a timestamp to generate a report identifying any other products commingled with the product.

In order to support an anticipation rejection under 35 U.S.C. 102(b), it is well established that a prior art reference must disclose each and every element of a claim. This well known rule of law is commonly referred to as the “all-elements rule.”<sup>3</sup> If a prior art reference fails to disclose any element of a claim, then rejection under 35 U.S.C. 102(b) is improper.<sup>4</sup>

Jorgenson et al. fails to disclose each and every limitation set forth in claims 1–4, 7–15, 52, 54–56, 58–60, 68–78, and 81–82. For at least these reasons, the Examiner has failed to establish a prima facie case for anticipation of Applicant’s claims 1–4, 7–15, 52, 54–56, 58–60, 68–78, and 81–82 under 35 U.S.C. 102(b). Withdrawal of this rejection is requested.

#### **Claim Rejection Under 35 U.S.C. § 103**

In the Office Action, the Examiner rejected claims 5–6, 53, 57, and 83 under 35 U.S.C. 103(a) as being unpatentable over Jorgenson et al. in view of Shortridge et al. (US 2001/0011437). Applicant respectfully traverses the rejection to the extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicant’s claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

In the Office Action, the Examiner acknowledged that Jorgenson et al. fails to teach or suggest a method or medium wherein a recall order is issued for all lots determined to have been commingled with a contaminated lot. The Examiner asserted that it would have been obvious to modify the method of Jorgenson et al. in view of the teaching of Shortbridge et al. Specifically, the Examiner stated that Shortbridge et al. teaches “means for determining all lots that have been

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<sup>3</sup> See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 USPQ 81 (CAFC 1986) (“it is axiomatic that for prior art to anticipate under 102 it has to meet every element of the claimed invention”).

<sup>4</sup> *Id.* See also *Lewmar Marine, Inc. v. Barient, Inc.* 827 F.2d 744, 3 USPQ2d 1766 (CAFC 1987); *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (CAFC 1990); *C.R. Bard, Inc. v. MP Systems, Inc.*, 157 F.3d 1340, 48 USPQ2d 1225 (CAFC 1998); *Oney v. Ratliff*, 182 F.3d 893, 51 USPQ2d 1697 (CAFC 1999); *Apple Computer, Inc. v. Articulate Systems, Inc.*, 234 F.3d 14, 57 USPQ2d 1057 (CAFC 2000).

contaminated and tracing a lot's history thereby identifying any other lots that have been commingled with the given lot." The Examiner noted that Shortridge discloses testing for contamination and that those lots would inherently be recalled.

However, like Jorgenson et al, Shortbridge et al. fails to teach any mechanism for identifying any other lots that have been commingled with products of a similar type that have been stored within the same lot, and consequently provides no teaching sufficient to cure the basic deficiencies already evident in Jorgenson et al. Instead, Shortbridge describes techniques for inspecting equipment and tracking individual lots (see, e.g., paragraph 0029), without addressing the issue of whether a product is commingled with another product. Thus, modifying Jorgenson et al. in view of Shortridge et al. fails to achieve Applicant's invention as recited in claims 5-6, 53, 57, and 83.

For at least these reasons, Jorgenson et al. in view of Shortbridge fails to establish a prima facie case for non-patentability of Applicant's claims 5-6, 53, 57, and 83 under 35 U.S.C. 103(a). Withdrawal of this rejection is requested.

### CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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